

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES OF THE
STATE OF MONTANA

In the matter of the amendment of ARM)
37.82.101 pertaining to Medicaid)
assistance)

NOTICE OF PUBLIC HEARING
ON PROPOSED AMENDMENT

TO: All Interested Persons

1. On July 12, 2006, at 3:00 p.m., a public hearing will be held in the auditorium of the Department of Public Health and Human Services Building, 111 N. Sanders, Helena, Montana to consider the proposed adoption and amendment of the above-stated rules.

The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice or provide reasonable accommodations at the public hearing site. If you need to request an accommodation, contact the department no later than 5:00 p.m. on July 3, 2006, to advise us of the nature of the accommodation that you need. Please contact Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210; telephone (406)444-5622; FAX (406)444-1970; e-mail dphhslegal@mt.gov.

2. The rule as proposed to be amended provides as follows. Matter to be added is underlined. Matter to be deleted is interlined.

37.82.101 MEDICAL ASSISTANCE, PURPOSE AND INCORPORATION OF POLICY MANUALS (1) Subject to applicable state and federal laws, regulations and rules, the Montana ~~m~~Medicaid program pays for covered medically necessary services for persons determined eligible by the department or its agents.

(2) The department adopts and incorporates by reference the state policy manuals, namely the Family Medicaid Manual and the SSI Medicaid Manual manuals governing the administration of the ~~m~~Medicaid program ~~effective July 1, 2005~~ dated July 1, 2006. The Family Medicaid Manual, the SSI Medicaid Manual, and the proposed manual updates are available for public viewing at each local Office of Public Assistance or at the Department of Public Health and Human Services, Human and Community Services Division, 111 N. Last Chance Gulch, P.O. Box 202925, Helena, MT 59620-2925. The proposed manual updates are also available on the department's website at www.dphhs.mt.gov/legalresources/proposedmanualchange.shtml.

AUTH: 53-2-201, 53-6-113, MCA

IMP: 53-6-101, 53-6-131, 53-6-141, MCA

3. ARM 37.82.101 currently adopts and incorporates by reference the Family Medicaid Manual and the SSI Medicaid Manual governing the administration of the

Medicaid program effective July 1, 2005. The department has made revisions to these manuals that will be retroactively to January 1, 2006. Amendment of ARM 37.82.101 is therefore necessary in order to incorporate into the Administrative Rules of Montana the revised versions of the policy manuals, to permit all interested parties to comment on the department's policies and to offer suggested changes. It is estimated that changes to the Family Medicaid Manual and to the SSI Medicaid Manual could affect 82,147 recipients. Manuals and draft manual material are available for review in each local Office of Public Assistance and on the department's website at www.dphhs.mt.gov. Following is a brief overview of the changes being made to each manual section for the Family Medicaid Manual and the SSI Medicaid Manual.

Family Medicaid Manual - Fiscal impact based on the changes below is expected to be zero.

FMA 201-10 Transitional Medicaid. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult Transitional Medicaid Assistance (TMA) recipients continue to cooperate with the Child Support Enforcement Division (CSED). Other minor clarification and formatting changes were also made to this section.

FMA 900 Child Support Overview. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult TMA recipients continue to cooperate with the CSED. This section was also updated with minor policy clarifications.

FMA 901-1 Child Support Cooperation. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult TMA recipients continue to cooperate with the CSED. This section also changes the policy regarding adults who are not cooperating with CSED but who later wish to cooperate. If CSED has closed such an individual's support case, only a new CSED referral (HCS/CS-332) is required to bring the individual back into cooperation. If CSED has not closed such an individual's support case, the needs of that individual can be added back to the Medicaid case if the individuals begin cooperation with reference to the element with which the individual previously failed to cooperate.

FMA 902-1 Child Support - Good Cause for Non-Cooperation. This manual section was updated to provide that the CSED referral will not be sent to the CSED office when the county Office of Public Assistance has determined an individual has good cause for not cooperating with CSED.

FMA 903-1 Child Support - Failure/Refusal to Cooperate. This manual section was updated to reflect a recent federal clarification from the Centers for Medicare and

Medicaid Services, U.S. Department of Health and Human Services, mandating removal of the requirement that adult Transitional Medicaid Assistance (TMA) recipients continue to cooperate with the Child Support Enforcement Division (CSED). The manual section was also changed to provide that if CSED has closed an individual's support case due to the individual's noncooperation status, that individual is only required to complete a new CSED referral (HCS/CS-332) in order to be considered to be cooperating and to have the needs of that individual to be included in the Medicaid case.

Fiscal impact of the following proposed changes to the SSI Medicaid Manual is expected to be zero. Although these changes include increases to the categorically needy standard and Pickle Standards and a statement of SSI Standard Payment Amount, all of these standards are required to match the federal standards as published by the Social Security Administration. Increases reflect the Social Security Administration's annual Cost of Living Allocation (COLA). These increases do not result in any increase in the number of eligible individuals, but only retain eligibility for those already receiving benefits.

MA 001 Categorically Needy; MA 005 Nursing Home Residents; and MA 11 Standard Payment Amounts (SPA). These manual sections were updated to incorporate increases in the federal benefit standards related to Cost of Living Allocations in the Supplemental Security Income Program based on the Social Security Act. The categorically needy standard in each of these manual sections is updated from \$579 to \$603 for the SSI Standard Payment Amount for an individual, and from \$869 to \$904 for the SSI Standard Payment Amount for a couple. Federal law requires the standards set forth in these manual sections to match the federal standards as published by the Social Security Administration. These increases do not result in an increase in the number of eligible individuals, but only retain eligibility for those already receiving these benefits.

MA 006 Pickle Applicants. "Pickle" is a special mandatory category of Medicaid eligibility defined at 42 CFR 435.135. Persons who are "Pickle-eligible" are individuals currently receiving Social Security benefits who were eligible for both OASDI and SSI at the same time and who lost their SSI eligibility at some time since April 1977 due to a cost of living increase (later amended to be a loss of SSI for any reason). The income of a Pickle-eligible individual or couple is tested against an adjusted categorically needy standard that takes into account the cumulative increase in the Consumer Price Index since the time their SSI ended. The adjusted categorically needy standard for Pickle-eligible individuals and couples is calculated based on the current year's SSI Standard Payment Amounts (also known as "categorically needy standard") and is adjusted backward for each year since July 1976 from that current standard by the cumulative increase in the Consumer Price Index. The table set forth in the manual section is provided as an alternative to calculating each case individually by deducting the increase which caused closure of SSI and all COLA increases since the time of the original increases. The changes to this table do not result in increased numbers of individuals eligible under this category, but do result in continued eligibility for those already receiving or for those

who would qualify and will apply in the future.

Unless otherwise noted, the following changes, most of which are intended to be policy clarifications, are not expected to result in fiscal impacts.

MA 201-4 Disabled Widows and Widowers and MA 201-9 Disabled Widow(er)s who Lost SSI Coverage Because of More Liberal Social Security Disability Criteria.

These manual sections are being deleted from the manual because it has been discovered they were each representing parts of the one defined Medicaid group under 42 CFR 435.137. The group defined in 42 CFF 435.137 was a group which was receiving OASDI in 1983, was entitled to receive widow's or widower's disability benefits in January 1984, and had applied for Medicaid by June 30, 1988. In order to have been entitled to widow's or widower's disability benefits in January 1984, these individuals would have had to have been at least 50 years of age at the time. Thus, these individuals are at least age 71 at present. Because disability benefits terminate when an individual attains age 65, the individuals who originally fit into this group are no longer recipients of widow's or widower's disability benefits, but are instead receiving retirement benefits. Therefore, there are no individuals who would fit into this group at this time. The manual sections are being removed from the manual in order to avoid confusion.

MA 601-2 Financial Responsibility of Relatives. This section is being rewritten to clarify that an institutionalized married person's resource eligibility for Medicaid must be based upon the resources owned by both the institutionalized married person's resources and the resources of that person's spouse, including a resource assessment and allocation, based on 42 USC 1396r-5, notwithstanding less specific conflicting regulations in the financial methodologies outlined in both 42 CFR and 20 CFR. The regulations in 42 CFR and 20 CFR regarding responsibility of relatives are out of date and at present apply to those who are not institutionalized or receiving Medicaid as if they were institutionalized (as in HCBS waiver). 42 CFR has not been updated to incorporate 42 USC 1396r-5, which superseded these regulations and apply more specifically to the institutionalized Medicaid groups.

MA 903-1 Resource Assessments (Residential Medical Institutions); MA 1001-1 Resource Assessments (Home & Community Based Services/Waiver). These manual sections were updated to incorporate federal payment standards related to the Spousal Impoverishment provisions of OBRA 1993 codified at 42 USC 1396r-5. The minimum and maximum spousal resource maintenance allowance standards in each of these manual sections are updated in MA 903-1 and MA 1-1001-1 from \$19,200 and \$95,100 to \$19,908 and \$99,540. Federal law requires the standards set forth in these manual sections to meet the federal standards as published by CMS. These increases do not result in an increase in the number of eligible individuals, but instead allow slight increases to the amount of assets the community spouse of an institutionalized or waiver recipient may retain rather than spend down to attaining Medicaid resource eligibility.

MA 904-2 Post eligibility Treatment of Income for Institutionalized Spouses; MA

1002-2 Income Disregards for Waiver Spouses. The maximum monthly maintenance needs allowance (income allowance for community spouses) set forth in these manual sections are updated to incorporate federal payment standards. The needs allowance is updated from \$2,377.50 to \$2,488.50. This standard is the maximum amount of income, including the community spouse's own income, that can be set aside for the needs of the community spouse. The amount disregarded from the nursing home or waiver spouse's income, when combined with the community spouse's own income, cannot exceed this standard. This increase will not result in an increase in the number of eligible individuals and will have no significant impact on the amount of client liability for costs of care because the increase will match the Cost of Living Allowance increase to most pensions (including Social Security benefits), thus resulting in zero net change.

4. The department intends that the amendments to ARM 37.82.101 be applied retroactively to January 1, 2006. The department was unable to file this rule at an earlier date due to the pressing nature of other business in the Office of Legal Affairs. No detrimental effects are anticipated as a result.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Dawn Sliva, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena, MT 59604-4210, no later than 5:00 p.m. on July 20, 2006. Data, views, or arguments may also be submitted by facsimile (406)444-1970 or by electronic mail via the Internet to dphhslegal@mt.gov. The department also maintains lists of persons interested in receiving notice of administrative rule changes. These lists are compiled according to subjects or programs of interest. For placement on the mailing list, please write the person at the address above.

6. The Office of Legal Affairs, Department of Public Health and Human Services has been designated to preside over and conduct the hearing.

/s/ Francis Clinch
Rule Reviewer

/s/ Russell Cater for
Director, Public Health and
Human Services

Certified to the Secretary of State June 12, 2006.